THE HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.NO.24616 OF 1998

DATED: 27.6.2007

Between:

The Depot Manager, APSRTC, Zaheerabad depot and another

… Petitioners

and

The Presiding Officer, Labour Court-II and another

….Respondents

THE HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.NO.24616 OF 1998

ORAL ORDER:

The A.P.S.R.T.C. has filed this writ petition challenging the award of the Labour Court-II, Hyderabad dated.04-01-1997 in I.D.No.58 of 1994.

The 2nd respondent was employed as a Conductor in 1983. On 13-09-1993 while he was conducting the bus on the route Zaheerabad to Tandur a check was made at Bonspur i.e., Stage No.6. The checking officials found certain cash and ticketing irregularities and issued a charge memo followed by a charge sheet on 25-09-1993.

Three charges were setout; (a) for having violated the rule "issue and start"; (b) that two passengers were trvelling without tickets who had boarded the bus at Laxmapur, Stage No.7/6 bound for Siddapur stage No.5. The workman collected the requisite ticket fare of Rs.2/- each from these two passengers but failed to issue the tickets; and (c) for failing to close the S.R up to Stage No.6 i.e., Bonuspuram.

The workman submitted an explanation to the charge sheet on 05-10-1995. As the explanation submitted was not satisfactory, a domestic enquiry ensued. The Enquiry Officer found the petitioner guilty of the charges and sent up a report. The disciplinary authority concurred with the Enquiry Officer and issued the workman a show-cause notice to show why he be not removed from service. After receipt of the explanation from the petitioner, on 09-12-1993 the punishment of removal

from service was imposed and communicated to the workman. The workman's appeal to the Divisional Manager was rejected on 25-04-1994. Eventually the workman raised the issue under Section.2-A(2) of the Industrial Disputes Act,1947. The Labour Court by the award impugned found that the punishment of removal imposed was disproportionate *"On consideration of all the material made available, by having due regard to the nature of service, the paultry sum involved*". The Labour Court set aside the punishment of removal from service and directed the reinstatement of the 2nd respondent into service with all attendant benefits such as continuity but without back wages.

The award passed by the Labour Court is seen to be perverse. The Labour Court considered the procedural aspects of the domestic enquiry and had upheld the domestic enquiry as valid by an order dated.12-07-1996 in the I.D.

Therefore the only question to be considered is one of the proportionality of the penalty imposed. After setting out the case of the workman; the defence by the management; the charges levelled against the workman; and the evidence in brief the Labour Court failed to analyze whether the conclusion of guilt arrived at in the domestic enquiry was based on cogent and rational analysis of evidence. One of the charges against the workman is that he had collected the fare of Rs.2/- each from two passengers who had boarded the bus at Laxmapur, Stage No.7/6 bound for Siddapur but had failed to issue the tickets. If this be so and if there is no plausible explanation for the failure to issue a ticket after having collected the fare, the conclusion is irresistible that the workman had committed a grave misconduct namely misappropriation of corporation funds causing the corporation financial loss.

Despite the above circumstance the Labour Court failed

to record any finding whether the conclusion arrived at by the Enquiry Officer and concurred with by the disciplinary authority with regard to charge No.2 was correctly arrived at within the parameters of domestic enquiry, whether there was any evidence, whether the explanation of the workman was rationally considered and if so the conclusion was correct. These are all areas where the labour Court has chosen to be non-speaking. It has very casually recorded the conclusion that on consideration of the material it found the punishment to be harsh and disproportionate. The process of reasoning has not been spelt out and the conclusion is very casually and negligently recorded. The award therefore cannot be sustained. It must also be noticed that if the workman were guilty of the charges and in particular of the charge No.2 the punishment of removal cannot be said to be harsh. The quantum of the amount misappropriated is not irrelevant. Misappropriation of Corporation's funds is certainly a serious misconduct, which deserves a grave penalty. The question however is whether the workman was guilty of having collected the fare and failed to issue the tickets. There is no finding recorded by the Labour Court on this aspect.

For the aforesaid reasons the award dated.04-01-1997 in I.D.No.58 of 1994 is quashed. The matter is remitted back to the Labour Court, Hyderabad for a *de novo* determination, taking due care to address the defects by the Labour Court as pointed out in this judgment. As the I.D. is of the year 1994 the Labour Court, Hyderabad shall determine and pass an award expeditiously and in any event within a period of three (3) months from the date of receipt of a copy of this Order.

With the above observations the writ petition is disposed of. In the circumstances there shall be no order as to costs.

GODA RAGHURAM,J

27th JUNE,2007
***TSNR**